68TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1620

RELATING TO THE CARRIAGE OF GOODS BY SEA

FEBRUARY 27, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. EDMONDS, from the Committee on the Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H. R. 12339]

The Committee on the Merchant Marine and Fisheries, to whom was referred H. R. 12339, having carefully considered the same, report the bill to the House without any substantial amendments, but with several amendments of phraseology as set forth below, with the recommendation that the bill as reported and the amendments thereto receive the favorable consideration of the House.

The present bill (H. R. 12339) relating to the carriage of goods by sea embodies the same subject matter covered by H. R. 14166 of the Sixty-seventh Congress, H. R. 5080 and H. R. 11447 of the Sixty-eighth Congress. All of these bills have been successively referred to the Committee on the Merchant Marine and Fisheries, and that committee held hearings on H. R. 14166 on February 13 and 14, 1923. The committee has recently also held hearings on H. R. 11447 (January 28 and 29, 1925), and H. R. 12339 was a revision of the earlier bills in the light of the testimony presented at these hearings; this fact is mentioned in explanation of the report relative to H. R. 12339, which was introduced February 18, 1925, following so soon after the introduction of the bill.

The following amendments in the phraseology of the bill are recommended:

Title I, section 2 (p. 2), strike out the words "of this act" immediately following the figure 6 in line 25; Title I, section 7 (p. 5), change the word "shall" in line 20 to "may"; Title I, section 8 (p. 11), change the word "shall" in line 25 to "may."

The proposed legislation has in view the establishment, as nearly as possible, of uniformity in bills of lading used in foreign trade, not only on the part of American carriers but by different maritime nations.

There have been five international conferences at which effort has been made to arrange a standard bill of lading and uniform obligations for use by ocean carriers in connection with foreign commerce. The first of these conferences was at the meeting of the International Law Association held at The Hague in August, 1921, at which meeting a code of rules relating to bills of lading was prepared which have since been commonly known as "The Hague Rules, 1921."

In November, 1921, an international conference of shipowners was held in London, attended by representatives of shipowners from many parts of the world. This meeting urged uniformity, even though the standardized form imposed burdens greater than the shipowners felt they should bear, emphasizing the importance of protection from conflicts of different laws in every country at which their vessels touched.

Pursuant to instructions from the Acting Secretary of State of the United States dated September 19, 1922, Hon. Charles M. Hough, a judge of the United States Circuit Court of Appeals, and Norman B. Beecher, Esq., an eminent admiralty attorney, attended a meeting of the International Maritime Committee held in London October 9–11, 1922. At this meeting The Hague Rules of 1921 were considered, together with amendments thereto which had been suggested before the meeting by representatives of shipowning and cargo-owning interests largely British, but also French, Belgium, and Dutch. Some opposition to the general plan of uniform rules was presented at the London meeting under two heads: (1) A fear that the rules would infringe local laws in some countries as to carrier's responsibilities before loading and after unloading. This was met by strictly limiting the rules to the period between loading and unloading, a restriction which clearly appears in the present bill as subparagraph (e), section 1 (p. 2). (2) The owners of cargo boats, usually chartered, frequently time chartered, objected to the master of a chartered ship being required to issue bills of lading as to quantity and other details as proposed by the rules. This objection was met by excluding chartered vessels from the obligation to issue bills, but providing that when bills are issued they would conform to the rules. This provision appears in section 8 of the present bill (p. 11). As will hereafter more fully appear, the masters of chartered vessels are also protected by the fact that the present bill is optional and not mandatory.

The delegates to the London conference, in their report to the President of the United States dated December 20, 1922, said:

> In our judgment the men attending in London very fully and fairly represented shipowners, cargo owners, underwriters, and maritime lawyers, and their unanimity in favor of some international set of rules regulating the carriage of goods between nations and in opposition to the maintenance of a sovereign's privilege in respect of commercial shipping was quite remarkable.

The conclusions of the London conference were laid before the International Maritime Conference organized at Brussels on October 17, 1922, with M. Franck, of Belgium, as president, to which conference Judge Hough and Mr. Beecher were also delegates. The report of these delegates was published by the Government Printing Office in 1923, entitled "Report of the Delegates of the United States to the International Conference on Maritime Law, Fifth Session, Brussels, Belgium, October 17–26, 1922." It contains a review of the proceedings of the International Maritime Committee, referred

to above, held in London October 9–11, 1922; also the draft of the international convention which forms the basis of the new British "Carriage of Goods by Sea Act," and is also the basis of the several Edmonds bills mentioned above, of which the last is H. R. 12339, to which this report relates. The United States delegates make the following statement regarding the advisability of the adoption of the so-called "Hague Rules" (report, p. 3):

> We regard the rules as finally formulated at Brussels a beneficial advance upon anything heretofore known in respect of bills of lading. The responsibility of carriers are materially increased; they will be obliged to cover additional risk by additional insurance. Whether this diversion (in theory at least) of insurance from the cargo owner to the carrier will result in a corresponding increase in freight rates, or whether competition will keep freight rates down, is something that only experience can make certain.
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> But such increase in carrier's responsibilities represents the united and insistent desire of shippers and cargo owners as well as of underwriters, notwithstanding the fact that the same underwriters will continue to insure the same risks whether the same are assumed by carriers or cargo.
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> In our judgment these rules are a response to the demand of American as well as other shippers; they are being insistently urged for legislative adoption, especially in Great Britain. We think that for business reasons the American shipowner will be wise to offer as good a bargain to the shipper as do his competitors.
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> In conclusion, it is our opinion that the "rules for the carriage of goods by sea" is a thing finished; it lies with the maritime nations of the world to take it or leave it. We think it ought to be taken.

The International Maritime Conference, referred to above, held at Brussels in October, 1922, having further developed the draft of the rules, unanimously recommended their adoption by the representatives of all countries present. The conference then adjourned, having appointed a "sous commission" (that is, a subcommittee) to carry forward the work of the conference and to receive and consider further suggestions as to the matters imposed in the protocol which was the result of the conference. In October, 1923, this subcommittee met in Brussels, and Norman B. Beecher, Esq., was again designated by the State Department as a delegate. The rules as adopted by the 1922 conference were in the main kept intact, but several amendments were made, and the rules as thus amended are annexed to this report, marked "Exhibit A."

Among the advantage pointed out by Charles S. Haight, Esq., who attended the meeting of the International Law Association mentioned above, is the fact that the rules to a large extent are a codification of our American Harter Act (act of February 13, 1893). Mr. Haight states:

> Only in Great Britain and the United States is the Harter Act really appropriate for adoption, because it is founded on the common law. In order to work out a code which could be adopted by the code countries of the Continent, we had to put it in the form of a code and not in the form of the Harter Act, which is a general prohibition. In addition to codifying the American law which the rest of the world is now ready to come to, the cargo interests have succeeded in this bargain in adjusting and I think in adjusting fairly, three or four of their long-standing grievances. The cargo interests have always said that it was not fair for a carrier to limit his liability per package to $100, or, as they have done in some cases, to 10 francs; when a case of shoes or of attractive canned fruits disappear on the voyage, it was not satisfactory to them if they were offered 10 francs for its nonproduction. The second complaint has been about the ordinary claim clause in the bill of lading wherein the consignee is held to have no right of claim unless he has filed a notice of damage before he took the goods away, filed his notice of claim within 30 days, and brought suit within 60 or 90 days.

In the present bill (H. R. 12339) suit may be brought at any time within one year after the delivery of the goods or the date when the goods should have been delivered, and provision is made that if the loss or damage is not apparent, notice thereof may be given within 30 days after the removal of the goods, and in no event will failure to give notice bar the claim, provided suit is brought within one year, the only effect of absence of notice being that in that event the removal of the goods shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

Mr. Haight further pointed out at the hearings:

A fourth complaint has been about the deviation clause. Some shipowners have put into their bills of lading clauses which gave them the right to go around the world two or three times before they discharged a man's goods, if they saw fit to exercise that right, backwards and forwards, going past their destination and coming back again, out of order, in and out, anything they liked, and if your contract specifies it the contract is good, and the shippers have objected to that.

The deviation clause has caused more trouble in the consideration of this subject than any other provision of the rules. The clause recommended by the Brussels conference reads as follows:

Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation, shall not be deemed to be an infringement or breach of these rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

The clause as printed in the Edmonds bill (H. R. 11447), preceding the present bill (H. R. 12339), reads as follows:

Any deviation in saving or attempting to save life or property in jeopardy at sea, or any deviation agreed upon between the carrier and the shipper at the time cargo space is contracted for, shall not be deemed to be an infringement or breach of this act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

The United States Shipping Board strongly advocated the use of the clause as agreed upon at the Brussels conference. Some interests, however, objected to the clause largely because of the uncertainties of application of the term "reasonable deviation." No one objected to a continuance of the ancient principle of law that a vessel might deviate from its course to save life or property at sea, but objection was made, particularly by Norman Draper, Esq., representing the Institute of American Meat Packers of Chicago, that when a carrier had undertaken to make a voyage from one point to another point he should not be free to deviate from the course of the voyage for mere commercial reasons, when it had been represented to shippers that the voyage would be direct. To allow this to be done frequently resulted, so it is claimed, in great loss to the owners of the cargo. The shipowners, on the other hand, objected to the vessel being deprived of its freedom to go from place to place, either to deliver or pick up cargo.

The committee has sought to meet the objections of the conflicting interests in the provisions of the present bill (sec. 4, par. 4) as follows:

(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation for purposes other than securing or delivering cargo or passengers, shall not be deemed to be an infringement or breach of this act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom: *Provided*, That nothing herein contained shall be construed to prohibit the carrier from entering into a contract specifically allow-

ing the ship to call at any number of named ports in any reasonable order to load or discharge cargo for the pending or return voyage.

This provision is the deviation clause recommended by the Brussels conference, through the meeting of its subcommittee held at Brussels in October, 1923, with the following changes:

The words "for purposes other than securing or delivering cargo or passengers" have been inserted after the words "reasonable deviation" for the purpose of satisfying the owners of perishable cargo and others that the word "reasonable" would not be construed to permit a deviation for mere commercial purposes. The proviso at the end of the section has been added to guard against the provision just mentioned being construed as precluding the carrier from expressly providing in the bill of lading, and therefore by contract, that the ship may call "at any number of named ports in any reasonable order to load or discharge cargo for the pending or return voyage."

In bills of lading based upon this proposed legislation a change would be made from the present frequent practice of carriers limiting their liability per package to $100 or, as they have done in some cases, to 10 francs, so that the maximum liability per package would be not less than $500. If the nature and value of the goods shipped have been declared by the shipper before shipment and inserted in the bill of lading, the value stated would be prima facie evidence in favor of the shipper in case of loss. It is not to be understood, on the other hand, that the shipper would be entitled to $500 for every package lost where the nature and value of the goods shipped had not been inserted in the bill of lading, for the burden would be on the shipper in such cases to prove the amount of the loss in fact sustained; the shipper, however, would have the advantage in cases where the loss exceeds the smaller amount named above ($100) that he would not be estopped, when the bill of lading is based upon this proposed act, by the provision now frequently used of limiting the carrier's liability to $100.

It is not our purpose to review all the provisions of the bill and indicate the changes and improvements over present law, deeming it wise to refer each Member of the House to the bill for a more detailed examination. An aspect of the matter which deserves emphasizing, however, is the fact that the shipper and the carrier can make their contract in the very simple form of referring to the "carriage of goods by sea act" as controlling their agreement, without setting forth all the details which are now found in bills of lading and to read which a magnifying glass is usually necessary.

It was pointed out by Mr. Haight (p. 7) that until two or three years ago every nation in the world had a different law and every steamship company in the world had a different form of bill of lading, and some steamship companies had 8 or 10 different forms; they did not themselves know what was in them. Bankers and underwriters seem to be practically unanimous in wanting a contract which will establish uniformity on the risk. The steamship owners also have concurred in the main with the general principles underlying the proposed uniform bill of lading.

It was stated, in behalf of the International Chamber of Commerce, by Mr. Haight:

I would like to add that we have acted for no country and for no special interests; in so far as it humanly lies within our power, we have tried to further a fair, practical bargain between all interests, equally beneficial, as we saw it, to all countries. The International Chamber had seen for years the pendulum swing from one extreme to another. During the war, a man who wanted to ship any goods would pay $100 per ton and would take a bill of lading in any form that ingenuity could devise. After the war the situation was precisely reversed; the steamship owner could not get any cargo to carry at all at any price, speaking broadly. Under those conditions, the shipper could dictate any form of bill of lading. A steamship company would have signed a bill of lading drawn in the form of a paragraph from the Declaration of Independence, or Alice in Wonderland, if only the shipper would give him a profitable freight rate.

Now those great extremes do no one any good. When it is a carrier's market he can dictate the most indecent terms and the shipper has to accept them. When it is a hopeless shipper's market he can do the same. What the International Chamber has been trying to do is to draw the line clearly, without regard to who is in the saddle and has the whip hand—to draw the line somewhere, for uniformity. I am perfectly convinced that is the most important thing of all in international transportation—to draw the line with reasonable honesty, trying to do reasonable justice to all sides, but drawing the line at some place for all countries, so you could make some system possible. If the underwriter can insure, the banker knows his rights, the carrier knows his risks and can cover himself, you have a system. But when you have every nation with a different law and every carrier with a different bill of lading, you have absolute chaos, and that is what we are trying to avoid.

Charles M. Hough, Esq., one of the delegates to the London and Brussels conferences mentioned above, was unable to attend the hearings, but submitted the following communication in behalf of the measure:

UNITED STATES CIRCUIT COURT OF APPEALS,
New York City, January 27, 1925.

Hon. GEORGE W. EDMONDS.

DEAR MR. EDMONDS: I hear that there will be another hearing on what are called "The Hague Rules."

It is impossible for me to personally attend the hearing, yet I can not help feeling that everything has been said that can be said, and the sole question remaining is whether the arguments that have been persuasive in other parts of the world maintain their persuasive qualities in the United States.

I recently furnished to the Department of State what might be called a comparative history of these rules, showing quite closely their evolution from the International Conference of 1922, through the meeting of the subcommission of 1923, and the enactment of the rules by the British Parliament in 1924.

The striking, and to me most persuasive, thing about this history is that with every opportunity to change, with a perfectly free hand, the delegates at Brussels and the members of Parliament have stuck to the original pattern; only in details, and comparatively unimportant details, have changes been introduced, for most of the changes are merely verbal and growing out of the necessity of choosing the best English to correspond to the French form used on the continent of Europe.

I sincerely trust that the committee will feel that all objections to the rules have been thoroughly argued out. Not everybody can get all they want out of any agreement over conflicting rights. The carrier, the banker, the underwriter, and the shipper undoubtedly all have rights, but in the nature of things they can not have all their rights in their own way. The compromise embodied in these rules is based upon a long and painful experience, and is, in my judgment, an honest endeavor to do the greatest good to the greatest number possible.

In this hope I send this letter to you, accompanied by a copy of the quasi historical memorandum furnished by me to the Department of State.

I remain, very truly yours,

CHARLES M. HOUGH.

The paper accompanying the above letter from Judge Hough is as follows; in reading it, wherever the word "Article" appears, if the word "Section" is substituted, the references will fit the sections of the pending bill (H. R. 12339):

A NOTE UPON THE RULES RELATING TO THE CARRIAGE OF GOODS BY SEA UNDER BILLS OF LADING, COMMONLY CALLED THE HAGUE RULES

These rules were tentatively stated in a draft international convention formulated at an international conference held at Brussels October 17–26, 1922.

The authorized American version in the English lanuage of these rules is found at page 100 of the report of the delegates of the United States to said conference published by the Department of State in 1923.

Pursuant to the action of said conference, the Sous Commission sat at Brussels October 6–9, 1923, to further consider the language and some minor details of the scheme put forth in 1922.

The official English version of the rules as proposed at the meeting of 1923 is found at page 150 of the Process-Verbaux des Seances de la Réunion de la Sous Commission, published by the Belgian Government at Brussels in 1924.

Great Britain adopted these rules by the passage of an act of Parliament to be cited as the "Carriage of goods by sea act, 1924," of which official copies are now ready.

The object of this note is to point out the differences and the meaning of those differences between the rules as formulated by the conference in 1922 as stated by the Sous Commission in 1923, and as enacted by Parliament in 1924.

I. The project of the Brussels conference was to enforce the rule by exchange of treaties or international conventions. Therefore the rules as a body are referred to throughout as the provisions of "this convention." In the British statute this phrase is uniformly changed to the words "these rules." See, for instance, article 3, section 8.

This is a merely formal thing and does not affect the meaning or scope of any portion of the proposed code.

II. Article 1 (b) defines the phrase "contract of carriage." The form of 1922 included within the definition of "contract of carriage":

"Any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading governs the relations between the carrier and the holder of the bill of lading."

The Sous Commission after discussion (Proces-Verbaux, p. 41) substituted the following language:

"Any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same."

The language of the Sous Commission has been carried verbatim into the British statute. The change noted is formal only.

III. Article 2 regulating the risks assumed by the carrier reads in the form put forth in 1922, to the effect that the carrier shall be subject to certain responsibilities and liabilities "in regard to" the loading, etc., of the goods.

The quoted phrase was changed by the Sous Commission on the suggestion of the English-speaking delegates to the phrase "in relation to"; and the wording of the Sous Commission is embodied in the British statute. It seems to me evident that the latter phrase is more in accord with ordinary Anglo-American statutory draftmanship.

IV. Article 3, subdivision 6, in the form of 1922, declares:

"6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

"If the loss or damage is not apparent, the notice must be given within three days of the delivery of the goods.

"The notice in writing will not be admissible if the state of the goods has, at the time of their receipt, been agreed to be otherwise than as stated in the notice.

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

The Sous Commission in 1923 changed this to read as follows:

"(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

"The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

The language of the Sous Commission is carried into the English statute. In my opinion the later and now statutory form is preferable.

V. Article 3, subdivision 7, in the form of 1922, provides that if a shipper has taken a document of title other than a "shipped" bill of lading, and a notation be made thereupon in respect of the ship or ships "upon which the goods have been shipped," and the date thereof, such document when so noted "shall for the purpose of this article be deemed to constitute a 'shipped' bill of lading."

The Sous Commission inserted the words hereinafter italicized, so as to provide that the document issued before shipment should after notation be deemed a "shipped" bill of lading *"if it shows the particulars mentioned in paragraph 3 of article 3."* (See discussion of this matter in the Proces-Verbaux of the Sous Commission, pp. 55–56.)

The British statute does not accept the emendation of the Sous Commission; it follows the language of the draft of 1922.

In my opinion the choice was well made. The insertion of the words suggested by the Sous Commission tends to introduce technicality into what may be and probably often would be a very informal document. For instance, a wharf receipt of a very informal kind might be turned by a notation of actual shipment into something that would entirely satisfy this section as drafted in 1922. But the language of the Sous Commission would perhaps wholly invalidate such a document because it would not contain in terms the particulars of paragraph 3 of article 3.

As proposed in 1922 and as now enacted in Great Britain, any court of either Great Britain or America would read the provisions of the statute or treaty into the wharf receipt I have imagined, and this ought to be the law.

VI. Article 3, subdivision 8, as drafted in 1922, contains a proviso "a benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability."

The Sous Commission report changed this language to read as follows: "A benefit of insurance *in favor of the carrier* or similar clause shall be deemed to be a clause relieving the carrier from liability."

The entire quoted clause was inserted in 1922 at the instance of the delegates from the United States in order to end a style of insurance litigation well known in our marine circles. We regarded the phrase "benefit of insurance clause" as a technical expression requiring no explanation.

The British statute has not chosen the words of the Sous Commission but contains the exact language of the draft of 1922.

In my opinion the amendment of the Sous Commission was useless and the phrase now embodied in the statute was well chosen.

VII. Article 4, subdivisions 5 and 6, as they read in the conference draft of 1922, have by the Sous Commission been consolidated, and the following sentence dropped out of the consolidation, viz:

"The rate of exchange shall be taken to be the rate ruling on the day of the arrival of the ship at the port of discharge of the goods concerned."

This consolidation also required the renumbering of article 4, subdivision 7 of the convention of 1922 which in the Sous Commission report becomes 6.

The form recommended by the Sous Commission has been chosen by the British statute makers and inserted into the new act verbatim. The reason for this change is that the Sous Commission and the British statute makers have arrived at the position taken in 1922 by several of the delegates, including those of the United States, viz, that it would be better to do what could be done to put business on a gold basis. This has been done by the first sentence of article 9 of the Sous Commission report and the same article in the British statute, viz, that "the monetary units mentioned in these rules are to be taken to be gold value."

To give an illustration of what this means: If the rules as recommended in 1922 had become law in both Great Britain and the United States, a British vessel issuing a bill of lading under the rules would have paid, say, about $4.46 per pound in compensation for loss and damage under this article. To-day, under the British statute now law, a British vessel would be liable at the par of exchange up to £100, no matter what the actual exchange might be.

VIII. Article 5 of 1922 provides that:

"A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under these rules, provided such surrender shall be embodied in the bill of lading issued to the shipper."

The Sous Commission in 1923 varied this so as to read as follows:

"A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities *or to increase any of his responsibilities and obligations under this convention*, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper."

The British statute adopts the language of the Sous Commission, except that it substitutes for the phrase "responsibilities and obligations" the words "responsibilities and liabilities."

In my opinion the substitution of the word "liabilities" for "obligations" is better legal English, and the amendment introduced by the Sous Commission makes the rights of parties clearer without changing the substance.

IX. Article 7, in the draft of 1922, read as follows:

"Nothing herein contained shall prevent a carrier or a shipper from inserting in a contract any stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

The Sous Commission in 1923 changed this to read thus:

"Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea."

The British statute chooses the language of the Sous Commission.

The change is merely a matter of form, and the later form is in my opinion better because the idea suggested by "entering into" an agreement is a wider and clearer idea than that contained in the phrase "inserting in a contract" a stipulation, etc.

X. Article 9 of the draft of 1922 is carried forward as article 10 of the Sous Commission draft of 1923.

This clause is appropriate to a convention but not to a statute. Therefore it is omitted in the British statute, as are several other articles of the same nature.

Therefore the British statute ends with the first sentence of article 9, which has been heretofore treated of as putting so far as possible claims arising under this method of doing business on a gold basis.

The result in my opinion of a comparison of the three latest forms of the so-called Hague Rules is that the English diction of the British statute is the best form yet devised, and that it presents no substantial variation from the draft convention of 1922 other than the gold-basis concept, and that I think is an improvement.

Dated September 29, 1924.

The following is a copy of a letter received from the Chamber of Commerce of the State of New York in support of the measure and also of a report to and resolution of that body on this general subject:

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK,
New York, January 26, 1925.

Hon. GEORGE W. EDMONDS,
Committee on the Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

DEAR SIR: The notice of a public hearing, which your have been so courteous as to cause to be sent to the Chamber of Commerce of the State of New York on H. R. 11447, relating to the carriage of goods by sea, comes at a time and on short notice when it may not be possible to arrange to send a representative of

the chamber to address the committee on this proposed legislation. Failing such an appearance in person, perhaps you will receive this brief statement and permit it to be read on that occasion.

The Chamber of Commerce of the State of New York by formal resolution at a regular meeting, April 6, 1922, recommended the adoption of the code drawn to define the risks to be assumed by ocean carriers under a bill of lading, commonly known as The Hague Rules, 1921, and urged the passage of appropriate and necessary legislation by the United States. A copy of that resolution and the report accompanying is attached hereto.

A very active discussion of this code by ship owning and cargo interests everywhere culminated in the diplomatic conference at Brussels in October, 1922, attended by representatives of 24 maritime nations, among whom were delegates from the United States. The conference, basing its action on The Hague Rules, 1921, reached an agreement, and signed a protocol, the so-called Hague Rules of present form, which will become an international convention upon ratification by the Governments of the signatories. This convention will codify and unify the dissimilar laws and practices of the world's maritime states, and will establish a recognized code of conditions common to ocean bills of lading.

The legislation proposed by H. R. 11447 is substantially the adoption of the Brussels convention, with such provisions as are necessary to bring them into harmonious action with existing laws of the United States. The convention has been adopted by some other countries and doubtless will be by all as action made imperative by the expansion and growing complexity of international commerce.

Committees of the Chamber of Commerce of the State of New York have given exhaustive study to the whole subject, not new but one of anxiety for many years, and will unanimously recommend to the chamber at its next regular meeting, February 6, action urging the adoption of this code of rules, and the passage by the Congress of the United States of the legislation proposed by H. R. 11447.

The hope is expressed that the honorable members of the Committee on the Merchant Marine and Fisheries will favorably report the bill now under consideration, H. R. 11447, to the House of Representatives.

Very respectfully,

HOWARD AYRES,
Chairman Committee on Foreign Commerce and the Revenue Laws.

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK

At the regular monthly meeting of the Chamber of Commerce of the State of New York, held April 6, 1922, the following report and resolution, submitted by its committee on foreign commerce and the revenue laws, were unanimously adopted.

THE HAGUE RULES REGARDING OCEAN BILLS OF LADING INDORSED

To the Chamber of Commerce:

Foreign commerce has long suffered from the lack of a uniform international ocean bill of lading which would extend the liabilities of ocean carriers. The result was that the various interests involved, in this and other countries, after numerous conferences, have drawn up and adopted what are known as The Hague Rules, 1921. These rules define the rights and liabilities of cargo owners and shipowners in new and improved form, and give to the foreign merchant protection upon a number of matters to which he has long considered himself entitled. In addition, The Hague Rules, by placing greater responsibility upon the carrier, will lead to greater care by shipowners in handling cargoes that losses may be prevented.

By The Hague Rules, 1921, the carrier's liability for loss or damage is increased from $100 to £100, and the carrier is not authorized to prorate the losses. The time within which claims for loss or damage can be filed is materially lengthened. In cases of loss, the burden of proof is placed upon the carrier to show that the loss did not occur while the goods were in his charge.

Your committee on foreign commerce and the revenue laws believes that the adoption in this country of The Hague Rules is a move in the right direction and will confer very real benefit to the foreign trade of the United States. Such adoption will also make for uniformity of commercial documents, which is much to be desired, especially in international commerce.

At present American ocean bills of lading are subject to the Harter Act and the Pomerene Act. But Congress should pass enabling legislation which will permit American ocean carriers to make contracts in accordance with the provisions of The Hague Rules, 1921.

Your committee, however, believes that existing Federal laws should be revised, as soon as practical, to bring them into conformity with The Hague Rules.

The following resolution is offered for your adoption:

Resolved, That the Chamber of Commerce of the State of New York recommends the adoption of The Hague Rules, 1921, by steamship companies, and the passage of enabling legislation by the Federal Government to make this possible, to be followed by a general revision of existing laws affecting ocean bills of lading to bring them into conformity with The Hague Rules.

Respectfully submitted.

WILLIAM E. PECK (*Chairman*),
HENRY A. CAESAR,
R. A. C. SMITH,
WILLIAM H. DOUGLAS,
EDWIN J. GILLIES,
HOWARD AYRES,
MAX EISMAN,
Committee on Foreign Commerce and the Revenue Laws.

Attest:

DARWIN P. KINGSLEY,
President.
CHARLES T. GWYNNE,
Secretary.

NEW YORK, *April 7, 1922.*

The Institute of American Meat Packers appeared through Norman Draper, Esq., and noted a number of objections to the bill in the form in which it existed at the time of the hearings (H. R. 11447), most of which objections, if not all of them, this committee believes to have been removed by the bill in its present form (H. R. 12339), and does not therefore deem it necessary to refer in detail to the objections presented by Mr. Draper, whose chief objection related to the deviation clause to which we have referred more in detail in the earlier part of this report.

The following resolution was submitted by Thomas B. Patton, Esq., in behalf of the American Bankers' Association:

Resolved, That, believing it most desirable for the furtherance of export trade that carriers the world over shall be governed by uniform rules making possible the working out of standard forms of ocean bills of lading for use in all regular trades, the commerce and marine commission of the American Bankers' Association strongly indorses in principle The Hague rules, 1921, which define in improved form the rights and liablilities of cargo owners and shipowners, respectively; and the commission urges that appropriate legislation be enacted by Congress making it lawful to contract for the transportation of property by sea subject to The Hague rules, 1921, any due and proper interpretation of the said rules being specifically given in such legislation.

The following resolution was submitted at the instance of Winthrop R. Marvin, Esq., vice president and general manager of the American Steamship Owners' Association:

HAGUE RULES—RESOLUTIONS ADOPTED BY EXECUTIVE COMMITTEE OF THE AMERICAN STEAMSHIP OWNERS' ASSOCIATION, JANUARY 27, 1925

Whereas the American Steamship Owners' Association recognizes the desirability of securing, so far as possible, uniformity in shipping documents and in the principles of law governing the carriage of goods by sea; and

Whereas the rules recommended by the International Maritime Conference held at Brussels in October, 1922, have, with some modifications, been enacted into law by England and other maritime nations; and

Whereas there is pending in Congress H. R. 11447, introduced by Congressman Edmonds, which, with some modifications, embodies the rules as adopted by said International Maritime Conference; and

Whereas notwithstanding that the rules and the Edmonds bill will increase the burdens of carriers, the American Steamship Owners' Association recognizes that the enactment of the bill, with proper amendments, will secure substantial uniformity in shipping documents, and in the principles of law governing the carriage of goods by sea and that for the sake of securing such uniformity the association should, in general, approve a bill of the purport of the Edmonds bill: Now, therefore, be it

Resolved, That this association approves of the enactment of a bill which shall give legal effect to the rules for the carriage of goods by sea, substantially as adopted by the International Maritime Conference held at Brussels in October, 1922, except that the association considers that the bill should permit such freedom of contract between carrier and shipper as will secure to the carrier the right of deviation in a proposed voyage as may be necessary to meet the requirements of trade, and except with such other minor changes as shall meet with the approval of counsel of the association.

A true copy.

Attest:

WINTHROP R. MARVIN,
Vice President and General Manager.

The following resolution and report was submitted by D. Roger Englar, Esq., attorney for the American Institute of Underwriters:

MINUTES OF MEETING OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS HELD AT 56 BEAVER STREET ON TUESDAY, MAY 6, 1924, AT 2.30 P. M.

Present:

Thames & Mersey Marine Insurance Co. and Union Marine Insurance Co., Mr. A. B. Grant.

Sea Insurance Co., Marine Insurance Co., Federal Insurance Co., London Assurance Corporation, and Hartford Fire Insurance Co., Mr. G. B. Ogden.

Home Insurance Co. and Franklin Fire Insurance Co., Mr. L. F. Burke.

United States Lloyds, Indemnity Mutual Marine Insurance Co., and Western Assurance Co., Mr. J. F. Johnston.

St. Paul Fire & Marine Insurance Co. and Providence Washington Insurance Co., Mr. William H. McGee.

Continental Insurance Co., Fidelity Phenix Insurance Co., Glens Falls Insurance Co., and Hanover Fire Insurance Co., Mr. W. H. Jones.

Aetna Insurance Co., Mr. R. E. Stronach.

American Merchant Marine Insurance Co., Mr. W. A. Sorensen.

National Liberty Insurance Co., Mr. H. W. Beebe; also Mr. D. R. Englar, counsel.

Mr. L. F. Burke, president, in the chair.

H. R. 5080, RELATING TO CARRIAGE OF GOODS BY SEA

The chairman, calling the meeting to order, stated that its purpose was to receive the report of the special committee appointed, vide minutes of meeting held on February 15 last, to take under consideration H. R. 5080 introduced in the House of Representatives on January 9, 1924, by the Hon. G. W. Edmonds, copies of which report had been circulated with notice of the meeting. (The original report signed by the members of the committee, together with printed copy of H. R. 5080, is attached following these minutes.)

Mr. Ogden, chairman of the committee, advised that the report had really been drawn up by Mr. D. R. Englar, who had assisted the committee as counsel, and that he had received the hearty cooperation of the members of the committee.

The changes suggested by the committee and dealt with in the report were generally considered, Mr. Englar stating his opinion with respect to some of the points raised in the discussion.

After full discussion of the annexed report of the committee, the following resolution was moved, seconded, and unanimously carried:

"*Resolved*, That the annexed report of the committee be adopted and indorsed by the institute, and that the same committee be continued, with author-

ity to cooperate with other trade organizations, consult counsel, represent the institute at congressional hearings, and take such other steps as may be necessary and proper to support the passage of H. R. 5080, with the amendments recommended in the committee's report."

Mr. Ogden mentioned that he had sent a copy of the committee's report to Mr. Haight, advising him, however, that the same had not been adopted by the institute at that time. This action by Mr. Ogden was approved and it was suggested that Mr. Haight should be empowered to use the report in any way he desired.

On motion, adjourned.

ERNEST G. DRIVER, *Secretary.*

REPORT OF THE SPECIAL COMMITTEE APPOINTED BY THE PRESIDENT OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS TO CONSIDER AND REPORT ON H. R. 5080, INTRODUCED IN THE HOUSE OF REPRESENTATIVES ON JANUARY 9, 1924, BY THE HON. G. W. EDMONDS

The above committee met on Monday, March 10, 1924. There were present Messrs. G. B. Ogden, chairman; H. E. Reed, W. D. Winter, S. D. McComb, J. F. Johnston; and D. R. Englar, who was asked to attend as counsel to the committee.

After a full discussion of the bill the committee arrived at the following conclusions:

1. That the Edmonds bill is substantially identical with the draft international convention for the unification of certain rules relating to bills of lading, adopted at Brussels in October, 1922. The bill embodies a code of regulations for the carriage of goods by sea which are more equitable and afford greater promise of a permanent and satisfactory adjustment of the relations between shipowners and cargo owners than any legislation which has ever been seriously considered in this country. Furthermore, these rules, having been approved by an international conference and being now embodied in a bill recently introduced in the British Parliament, afford a unique opportunity for the attainment of uniformity in the laws of the principal maritime nations on this subject. The committee, therefore, recommends that the American Institute of Marine Underwriters support the Edmonds bill and endeavor to aid in its passage.

2. In certain particulars the committee feels that the bill can be improved upon. It may be noted that its criticisms relate either to the English translation of the original French draft of the Brussels convention or to matter which does not appear in the convention; in other words, it does not suggest any departure from the original international convention but, on the contrary, a closer adherence to its terms.

(a) The deviation clause in the original draft international convention (Art. IV, subdivision 4) reads as follows:

"4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom."

The corresponding provision of the Edmonds bill reads as follows:

"(4) Any deviation in saving or attempting to save life or property in jeopardy at sea or any deviation agreed upon between the carrier and the shipper at the time cargo space is contracted for shall not be deemed to be an infringement or breach of this act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom."

Under existing law the shipper and carrier are free to make any contract they choose with respect to deviation, and it is customary to insert in ocean bills of lading very broad liberties of deviation, which are, in form, wide enough to cover almost any conceivable departure from the usual route. These liberties have not infrequently been abused, to the prejudice of shippers and consignees. While the courts have usually construed such clauses strictly against the carrier, they have had no power to afford any relief to the shipper where the deviation fell clearly within the terms of the clause, no matter how unreasonable the clause or the deviation might be. The provision above quoted from the draft international convention was obviously designed to cure this situation and to make the reasonableness of a deviation the test of its validity. Your committee believes that the provisions of the draft international convention on this point

lays down a fair rule which will afford additional protection to cargo interests.

Unfortunately, the corresponding clause above quoted from the Edmonds bill does away with the rule of reasonableness, and substitutes a provision that the carrier may make any deviation which is agreed upon between the carrier and the shipper at the time the cargo space is contracted for. Under this provision, if the freight contract contains the usual clause that it is subject to the terms of the bill of lading in use by the carrier at the time, the present very wide deviation clauses, if the bill of lading happens to contain them, will be automatically incorporated in the freight contract and will be legal under the Edmonds bill.

Your committee believes that the American Institute of Marine Underwriters should use its influence to have the language of the draft international convention substituted for the present language of the Edmonds bill on the subject of deviation.

(b) The Edmonds bill is limited in its application to foreign voyages; it does not even apply to voyages between the east and west coasts of the United States. Your committee believes that this limitation on the scope of the act is unfortunate. If, as it believes, the rules represent a distinct and desirable advance over existing law, there seems to be no reason why they should not be applied to coastwise voyages. Furthermore, many export shipments are carried on coastwise vessels to the port from which they are exported, and the exclusion of such coastwise voyages from the operation of the Edmonds bill will destroy, in a considerable measure, the uniformity which is one of the ends sought to be attained by the draft international convention.

Your committee, therefore, recommends that the association use its influence to have section 11 of the Edmonds bill modified so as to make the bill applicable to voyages between American ports as well as to voyages between such ports and foreign ports.

(c) Subdivision 6 of section 3 of the act has been criticized on the ground that the second paragraph of this subdivision is not a correct translation of the original French draft.

In its present form this paragraph reads as follows:

"The notice in writing will not be effective if the state of the goods has at the time of their receipt been agreed to be otherwise than as stated in the notice."

Your committee is informed that the bill which has been introduced in the British Parliament has been modified by substituting for the language above quoted the following paragraph:

"The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of a joint survey or inspection."

Your committee is informed and believes that the language last above quoted is a more accurate translation of the original French draft, and it recommends that an effort be made to have the Edmonds bill modified accordingly.

In recommending that the institute endeavor to have the foregoing changes made in the bill, however, your committee desires to make it clear that if the bill can not be amended, it believes that the institute should support the passage of the bill in its present form.

3. Your committee recommends that it be continued, or a new committee appointed, with instructions to represent the institute at any hearings which may be held on the Edmonds bill, and to take such other steps as may be appropriate to support the passage of the bill. For this purpose the committee should be empowered to employ counsel and to cooperate with other trade organizations which are, or may be, interested in the passage of the bill.

Respectfully submitted.

GEO. B. OGDEN.
S. D. MCCOMB.
WILLIAM D. WINTER.
H. E. REED.
J. F. JOHNSTON.

APRIL 29, 1924.

William M. Chandler, Esq., manager of the traffic bureau of the Merchants' Association of New York, appeared in behalf of that association and in the main supported the principles and policies of the bill H. R. 11447, but recommended certain changes which this

committee believes to have been made in the bill now under consideration.

W. H. Day, Esq., appeared in behalf of the Boston Chamber of Commerce and stated that the organization which he represented concurred in the conclusions of the Merchants' Association of New York, referred to above.

Charles M. Barnes, Assistant Solicitor, Department of State of the United States, appeared in behalf of that department, and, among other things, said:

> The purpose of the Secretary of State in sending a representative to these hearings was merely to maintain the official link, or chain, between the international conference and the bill which this committee now has before it for consideration. The international draft first came into being as a diplomatic document, as a result of the conference of 1922, which is referred to as the fifth session of the International Conference on Maritime Law. Those international conferences on maritime law—the first one was held in 1888. The international acts which they have dealt with in previous years are not under consideration here and it is unnecessary to refer to them. The conference of 1922 produced drafts of three conventions. Only one of those is under consideration here at this time. At that conference, 24 countries, as has already been said, were represented by delegates. Those countries included all the maritime powers of the earth, I think we might correctly say. Their delegates signed and recommended back to their governments for consideration the drafts of these three conventions, including the one relating to the carriage of goods by sea. * * * The Secretary of State indorses the work of the international conference, commends it to the consideration of the committee in connection with the bill before the committee, and, along with that recommendation, commends the recommendation of the delegates which were sent by this Government to the conference.

The following resolution by the United States Shipping Board was submitted by Mr. John Nicolson, counsel to the committee on legislation of the board:

> The Shipping Board at a meeting on January 20, 1925, adopted the following resolution:
>
> "Whereas conferences have been held from time to time by persons * * * representing various maritime nations, having in view a uniform contract for the carriage of goods by sea, and a form was agreed upon by these persons in October, 1923, which has in the main been enacted into law by the British Parliament, and a proposal is now pending in Congress in the form of H. R. 11447 for its adoption by the United States:
>
> "*Resolved*, This board approves the general principles and proposals of H. R. 11447, subject to changes that the committee on legislation of this board believes to be wise in the light of hearings which that committee has held and in the light of its own analysis of the bill. The committee on legislation is authorized to approve the general purpose and provisions of the bill and to recommend to the Committee on the Merchant Marine and Fisheries of the House of Representatives the adoption of any incidental amendments which the committee on legislation may propose or in which it may concur."

In addition to the resolution thus introduced various amendments were proposed by Mr. Nicolson and by Mr. Arthur M. Boal, of the admiralty division of the Shipping Board, which proposed amendments related to the bill in the form in which it was then pending (H. R. 11447), and the committee believes all of them have been substantially met in the bill (H. R. 12339) to which this report relates.

The earlier bills on this subject, to which reference has been made, contained a penal clause applicable to cases where a contract for carriage of goods by sea, in traffic to which the measure related, might have provisions other than those prescribed. During the recent hearings in the meeting (January 28–29, 1925) it was not made to appear to the satisfaction of this committee that the British

bill based on the rules adopted by the international conference to which we have referred was in all respects mandatory, and it was the opinion of the committee that the present bill, therefore, should not be made mandatory, lest American carriers should be prejudiced in their competitive relations with British carriers. The penal clause has therefore been omitted from the bill now reported (H. R. 12339), and the use of the proposed uniform bill of lading is thus left optional with carriers and shippers. Notwithstanding the fact that its use is thus optional, a substantial advantage will accrue from the enactment of the bill into law, not only thus establishing a precedent of a proposed uniform bill of lading but because it will have the force of law in respect to all contracts for the carriage of goods by sea where the parties to the contract have adopted the provisions of this act by reference to the act, and they will thus become relieved of any and all provisions of law in conflict with the provisions of the carriage of goods by sea act. Reference has been made above to the statement of the delegates sent by the Department of State to the Brussels conference regarding the demand for legislative adoption of the rules; since their report the rules have been legalized by the British Parliament. The delegates in their report say: "We think that for business reasons the American shipowner will be wise to offer as good a bargain to the shipper as do his competitors." The delegates here refer solely to the provisions of the bill of lading. The enactment of this bill will put American carriers in a position to offer, in respect to the bill of lading, "as good a bargain to the shipper" as his competitors, notwithstanding its use is optional. On the other hand, if the use of these provisions is made mandatory on American carriers, they would not, if their competitors are not limited exclusively to similar provisions, be in a position to offer "as good a bargain to the shipper" as their competitors.

The bill by its own terms applies only to bills of lading issued in foreign trade.

EXHIBIT A

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO BILLS OF LADING

ARTICLE 1. In this convention the following words are employed with the meanings set out below:

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) "Goods" includes goods, wares, merchandises, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) "Ship" means any vessel used for the carriage of goods by sea.

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

ART. 2—Subject to the provisions of article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ART. 3.—(1) The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

(a) Make the ship seaworthy.

(b) Properly man, equip, and supply the ship.

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation.

(2) Subject to the provisions of article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

(3) After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing, among other things:

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces or the quantity or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods.

Provided, That no carrier, master, or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b), and (c).

(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damage, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading: *Provided*, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted (if it shows the particulars mentioned in paragraph 3 of article 3) shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance in favor of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

ART. 4.—(1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence

on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating, and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph 1 of article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

(b) Fire, unless caused by the actual fault or privity of the carrier.

(c) Perils, dangers and accidents of the sea or other navigable waters.

(d) Act of God.

(e) Act of war.

(f) Act of public enemies.

(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process.

(h) Quarantine restrictions.

(i) Act or omission of the shipper or owner of the goods, his agent, or representative.

(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general.

(k) Riots and civil commotions.

(l) Saving or attempting to save life or property at sea.

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods.

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks.

(p) Latent defects not discoverable by due diligence.

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

(3) The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

(6) Goods of an inflammable, explosive, or dangerous nature to the shipment, whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ART. 5.—A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ART. 6.—Notwithstanding the provisions of the preceding articles, a carrier, master, or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided, That this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ART. 7.—Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with the custody and care and handling of goods prior to the loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea.

ART. 8.—The provisions of this convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

ART. 9.—The monetary units mentioned in this convention are to be taken to be gold value.

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

ART. 10.—The provisions of this convention shall apply to all bills of lading issued in any of the contracting States.

ART. 11.—After an interval of not more than two years from the day on which the convention is signed, the Belgian Government shall place itself in communication with the governments of the high contracting parties which have declared themselves prepared to ratify the convention with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said governments. The first deposit of ratifications shall be recorded in a proces-verbal signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposit of ratifications shall be made by means of a written notification addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the proces-verbal relating to the first deposit of ratifications, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel, to the powers who have signed this convention or who have acceded to it. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

ART. 12. Nonsignatory States may accede to the present convention whether or not they have been represented at the international conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

ART. 13.—The high contracting parties may at the time of signature, ratification, or accession, declare that their acceptance of the present convention does not include any or all of the self-governing dominions, or of the colonies, overseas possessions, protectorates or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate, or territory excluded in their declaration. They may also denounce the convention separately in accordance with its provisions in respect of any self-governing dominion, or any colony, overseas possession, protectorate, or territory under their sovereignty or authority.

ART. 14.—The present convention shall take effect, in the case of the States which have taken part in the first deposit of ratifications, one year after the date of the protocol recording such deposit. As respects the States which ratify subsequently or which accede, and also in cases in which the convention is subsequently put into effect in accordance with article 12, it shall take effect six months after the notifications specified in paragraph 2 of article 11 and paragraph 2 of article 12 have been received by the Belgian Government.

ART. 15.—In the event of one of the contracting States wishing to denounce the present convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other States informing them of the date on which it was received.

The denunciation shall only operate in respect of the State which made the notification, and on the expiry of one year after the notification has reached the Belgian Government.

ART. 16.—Any one of the contracting States shall have the right to call for a fresh conference with a view to considering possible amendments.

A State which would exercise this right should notify its intention to the other States through the Belgian Government, which would make arrangements for convening the conference.

PROTOCOL OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO BILLS OF LADING

The high contracting parties may give effect to this convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation, the rules adopted under this convention.

They may reserve the right:

(1) To prescribe that in the cases referred to in paragraph 2 (c) to (p) of article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (a).

(2) To prescribe that the last subparagraph of paragraph 5 of article 4 shall not apply in cases in which the shipper has made an understatement of the true value.

(3) To apply article 6, in so far as the national coasting trade is concerned, to all classes of goods without taking account of the restriction set out in the last paragraph of that article.

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